

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
November 17, 2011
Costa Mesa, California

I. PUBLIC MEETING**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., November 17, 2011, in the Costa Mesa City Council Chambers, Costa Mesa, California.

ATTENDANCE**Board Members Present**

John MacLeod
Bill Jackson
Dave Thomas
Hank McDermott
Guy Prescott
Willie Washington

Board Members Absent

Jack Kastorff

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
David Beales, Legal Counsel
Hans Boersma, Senior Safety Engineer
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer
Joel Foss, Acting Principal Safety Engineer

Others present

Terry Thedell, SDG&E
Kevin Thompson, Cal-OSHA Reporter
Kate Smiley, AGC
Joan Gaut, CTA
Mark Stone, Epic Insurance Brokers
Larry Pena, SoCal Edison
Dick Roberts, DOSH
Kevin Bland, RCA/CFCA
Kimberly Washington, UCSD
Victor Esparza, Local 12

Bruce Wick, Cal PASC
David Shiraishi, Federal OSHA
Bill Taylor, PASMA
Wendy Holt, CSATF/AMPTP
Rick Latham, USW
Steve Johnson, Assoc. Roofing Contr.
Jogen Bhalla, AMOT
Jim Zaben, Kings Oil Tools
David P. Simmons, USW Local 675
Doug Van Allen, Baker Hughes, Inc

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| Tim Maples, National Oil Well | Russ Haddadin, AMOT |
| Jay Vicory, OSHA | Darin Jeffries, Production Company |
| James Thomas, Nabors Well Services | Robert D. Jones, Nabors Well Services |
| George Harmer, General Production Svcs. | Mike George, Key Energy |

B. OPENING COMMENTS

Mr. MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 10:04 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:04 a.m., November 17, 2011, in the Costa Mesa City Council Chambers, Costa Mesa, California.

Mr. MacLeod opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 4, Section 1532.1
Article 15, Section 1615.7
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7
Article 9, Section 3361
Article 101, Sections 5042, 5044, 5045, 5047, and 5049
Article 107, Section 5144
Article 109, Sections 5191, 5198, and 5209
SHIP BUILDING, SHIP REPAIRING, SHIP BREAKING
SAFETY ORDERS
Division 1, Chapter 4, Subchapter 18, Article 4
Section 8355
Federal Final Rule, Standards Completion Project—Phase
III (Horcher)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

There were no public or Board comments on this proposal.

Mr. MacLeod then introduced the next item noticed for Public Hearing:

2. **TITLE 8:** **PETROLEUM SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 14
 Article 2, Section 6505
 Article 35, New Section 6625.1
 Article 46, Section 6651
 Diesel Engine Runaway Protection

Mr. Manieri summarized the history and purpose of the proposal and indicated that it was ready for the Board's consideration and the public's comment.

The following speakers oppose the proposal primarily for the following reasons: (1) there are already administrative controls in place in California to prevent diesel engine runaway explosions; (2) California Air Resources Board (CARB) does not permit any after-market additions to on-road diesel engines—any such additions will cause the vehicle to fail an emissions test; (3) there is not sufficient accident data in California to justify such a regulation; and (4) the cost of compliance would be significant:

- **Doug Van Allen** of Baker Hughes
- **James Thomas** of Nabors Well Services
- **Mike George** of Key Energy Services
- **Jim Zaben** of Kings Oil Tools
- **Tim Maples** of National Oil Well
- **George Harmer** of General Production Services

The following speakers support the proposal, although they would recommend modifying the 50-foot safety zone to be commensurate with the American Petroleum Institute's (API) recommended 100-foot area regarding spark arrestors:

- **Russ Haddadin** of AMOT
- **Jogen Bhalla** of AMOT
- **Rick Latham** of United Steelworkers (USW)

The following speakers support the proposal because it promotes worker safety:

- **Victor Esparza** of Operating Engineers Local 12
- **David Simmons** of USW Local 675

Mr. Prescott expressed concern that we should pay attention only to California accident data, as we have numerous other controls, both environmental requirements and safety requirements, in place

that other states and countries do not have. He urged Board staff to bring forward a stronger statement regarding necessity. There has not been a diesel runaway problem here in California with current monitoring and administrative controls in place.

Mr. Prescott also expressed concern that the advisory committee did not reach consensus to go forward with rulemaking. In addition, the cost estimates are wrong; there are going to be costs associated with this proposal. Finally, the proposal has the potential of putting employers in violation of CARB on-road vehicle regulations. We have just spent over three years and thousands of hours of staff time because CARB put into place regulations that created safety hazards, and it would be a mistake for us to start requiring something for which there does not appear to be a need within the state, something for which there is no consensus, and something that puts the employers in a position of having to choose between having to comply with a CARB regulation or a Cal-OSHA regulation.

Mr. Prescott advised staff to talk to CARB to ensure the fact that if these devices are put on on-road vehicles, they will not violate CARB standards, although it appears that they will. It is not fair to put employers in a Catch-22 position. He does not see any reason at this time for the proposal to go forward for all of the reasons he has stated.

Mr. Jackson expressed agreement with Mr. Prescott. He does not believe that there has been a clear demonstration of necessity for the proposal. It appears that the advisory committee was presented with a proposed regulation rather than being asked whether there was a need for a regulation in the first place.

Mr. MacLeod inquired about consensus at the advisory committee and stated that it appeared that there was little or no accident data in California related to diesel engine runaways.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 11:16 a.m.

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 11:16 a.m., November 17, 2011, in the Costa Mesa City Council Chambers, Costa Mesa, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 4, Section 3276
Article 5, Section 3287
Use of Portable Step Ladders
(Heard at the October 20, 2011, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. McDermott that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 54
Section 4188
Definition of General Purpose Die
(Heard at the October 20, 2011, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Prescott and seconded by Mr. Thomas that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Bill Taylor, CSP
Public Agency Safety Management Association (PASMA) South Chapter
Petition File No. 524

Petitioner requests that the Board amend Title 8, California Code of Regulations, Section 5199, Aerosol Transmissible Diseases, to allow certain emergency personnel to use N-100 respirators instead of P-100 respirators in non-oil environments.

Ms. Hart summarized the history and purpose of the petition, and asked the Board to adopt the proposed decision granting it to the extent that the Division convene an advisory committee to consider the Petitioner's recommendations.

MOTION

A motion was made by Mr. Jackson to adopt the proposed decision with a provision that the Division report back to the Board in six months on the progress of the advisory committee. Mr. McDermott seconded the motion.

Mr. Prescott noted that any fire or other public agencies that wished to use N-100 respirators prior to the convening of the advisory committee could go through the variance process. Mr. Beales responded that that is already being done by a number of agencies.

A roll call was taken, and all members present voted “aye.” The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that the variance matters were heard by a hearing panel just before today’s meeting with the recommendation that the Board adopt the proposed decisions that appear in the Board packet.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Prescott to adopt the consent calendar as proposed.

A roll call was taken, and all members present voted “aye.” The motion passed.

D. OTHER

1. Executive Officer’s Report

Ms. Hart stated that staff plans to convene an advisory committee regarding the employer duty to pay for personal protective devices in the first quarter of 2012. This meeting will be co-chaired by Michael Manieri and David Beales, and the purpose of the meeting is to discuss reasonable exceptions for the duty to pay requirement. We already have the names of several people and organizations that have expressed interest in participating in the advisory committee; however, if interested persons want ensure that we have their names, they should send an email to the Standards Board at oshsb@dir.ca.gov or call Ms. Hart directly at (916) 274-5733. We understand that there could be a lot of people interested in this advisory committee, and interested parties are always welcome to attend.

Board staff will convene an advisory committee on November 29 and 30 in Sacramento to consider operating requirements for all terrain vehicles and all terrain utility vehicles to ensure safe transportation of employees and materials. This meeting is being chaired by Hans Boersma, and this information is on our website with the proposal and background.

Ms. Hart announced that, earlier this month, the Standards Board conducted interviews for the Senior Safety Engineer position previously held by Tom Mitchell. We were fortunate to have several very qualified candidates, and we have hired Patrick Corcoran to join our staff as a Senior Safety Engineer. Patrick is a Certified Industrial Hygienist and has worked for the Division of Occupational Safety and Health for the past 11 years in the Sacramento District Office. His start date with the Board will be December 12, 2011.

2. Future Agenda Items

None identified.

E. CLOSED SESSSION

The closed session was cancelled.

F. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 11:31 a.m.